Federal Antidiscrimination Laws

1. Title VII of the Civil Rights Act.

Title VII of the Civil Rights Act of 1964 (42 U.S.C. §§ 2000e and following) prohibits employers from discriminating against applicants and employees on the basis of race, color, religion, sex, and national origin (including membership in a Native American tribe). It also prohibits employers from retaliating against an applicant or employee who asserts his or her rights under the law.

Title VII prohibits discrimination in all terms, conditions, and privileges of employment, including hiring, firing, compensation, benefits, job assignments, promotions, and discipline. Title VII also prohibits practices that seem neutral but have a disproportionate impact on a protected group of people. Such a practice is legal only if the employer has a valid reason for using it. For example, a strength requirement might be legal -- even though it excludes disproportionate numbers of women -- if an employer is using it to fill a job that requires heavy lifting. Such a requirement would not be valid for a desk job, however.

Title VII makes it illegal to harass someone on the basis of a protected characteristic (race, sex, and so on).

Title VII applies to employers that fit into the following categories:

- private employers with at least 15 employees
- state governments and their political subdivisions and agencies
- the federal government
- employment agencies
- labor organizations, and
- joint labor-management committees and other training programs.

The U.S. Equal Employment Opportunity Commission (EEOC) enforces Title VII. The EEOC has offices throughout the country. To find the office nearest you, and to learn more about Title VII and other antidiscrimination laws, log on to the EEOC's website at www.eeoc.gov.

2. Age Discrimination in Employment Act.

The Age Discrimination in Employment Act (ADEA) can be found at 29 U.S.C. §§ 621-634. It prohibits discrimination based on age against employees who are at least 40 years old. It also prohibits employers from retaliating against an applicant or employee for asserting his or her rights under the ADEA.

The ADEA prohibits age discrimination in all terms and conditions of employment, including hiring, firing, compensation, job assignments, shift assignments, discipline, and promotions. A separate law, the Older Workers Benefits Protection Act (OWBPA), protects employees over the age of 40 from discrimination in benefits.

The ADEA applies to private employers with at least 20 employees, the federal government, interstate agencies, employment agencies, and labor unions. Although the ADEA also protects

state government employees, these employees may not file lawsuits claiming age discrimination -- they may assert their rights only through the Equal Employment Opportunity Commission (EEOC).

The EEOC enforces the ADEA. To find an EEOC office near you, and to learn more about the ADEA, log onto the EEOC's website at www.eeoc.gov.

3. Americans With Disabilities Act.

The Americans With Disabilities Act (ADA) can be found at 42 U.S.C. §§ 12101-12213. It prohibits employers from discriminating against people with disabilities in any aspect of employment, including applications, interviews, testing, hiring, job assignments, evaluations, compensation, leave, benefits, discipline, training, promotions, medical exams, layoffs, and firing.

The ADA protects not only applicants and employees with disabilities; it also protects those who have a history of disability and those who are perceived -- incorrectly -- as having a disability. For example, an employee who was diagnosed with cancer and has been in remission for ten years may not have a current disability, but his employer is still prohibited from making jobrelated decisions based on the employee's former disability. Similarly, an employee who walks with a limp may not have a disability, but an employer who makes job-related decisions based on the mistaken belief that the employee is disabled (for example, by refusing to promote the employee to a managerial position that would require her to walk a shop room floor) violates the ADA. The ADA also prohibits employers from discriminating against someone because that person is related to or associates with someone who has a disability.

The ADA applies to private employers with at least 15 employees, local governments and their agencies, employment agencies, and labor unions. Although state employees are protected by the law, these employees may not sue their state government employers for monetary damages. A separate law, the Rehabilitation Act, protects federal employees from disability discrimination.

Two government agencies enforce the ADA: the U.S. Department of Justice, at www.ada.gov, and the EEOC, at www.eeoc.gov.

4. Equal Pay Act.

The Equal Pay Act (29 U.S.C. § 206(d)) requires employers to give men and women equal pay for equal work. Employees do equal work when they perform, under similar working conditions, jobs that require equal skill, effort, and responsibility. Two jobs may be equal even if they have different job titles. For example, a hotel may not pay its janitors, who are primarily men, more than its housekeepers, who are primarily women, if they are doing the same work.

There are a few exceptions to the Equal Pay Act. Employers can pay men and women different salaries for doing equal work if the difference is based on seniority, merit, an incentive system, or any factor other than gender.

Practically speaking, all employers must comply with the Equal Pay Act. This includes private employers (regardless of size), the federal government, state and local governments, and labor unions.

The EEOC enforces the Equal Pay Act. To find an EEOC office near you, and to learn more about the Equal Pay Act, log onto the EEOC's website at www.eeoc.gov.

5. Immigration Reform and Control Act.

The Immigration Reform and Control Act of 1986 (IRCA) can be found at 8 U.S.C. § 1324. IRCA prohibits employers from discriminating against applicants and employees on the basis of their citizenship or national origin. IRCA's prohibition on discrimination applies to all terms, conditions, and privileges of employment, including hiring, firing, compensation, benefits, job assignments, promotions, and discipline. This antidiscrimination provision applies to federal, state, and local governments and to private employers with at least four employees.

IRCA also makes it illegal for employers to knowingly hire or retain employees who are not authorized to work in the United States. Employers are required to examine employee documents and keep records verifying that their employees are authorized to work in this country.

IRCA is enforced by the U.S. Department of Justice, Office of Special Counsel for Immigration-Related Unfair Employment Practices, at www.justice.gov/crt/osc.

6. Civil Rights Act of 1866 (Section 1981).

The Civil Rights Act of 1866 (commonly referred to as Section 1981 because of its location in the United States Code) declares African Americans to be citizens, entitled to a series of rights previously reserved to white men. The law confers a number of rights, including the right to sue or be sued in court, to give evidence in a lawsuit, and to purchase property. It also confers the right to make and enforce contracts, which courts have found prohibits racial discrimination in the employment relationship.

Although the law's original purpose was to protect African Americans, courts have interpreted it to protect people of all races from discrimination and harassment. Section 1981 has also been interpreted to prohibit discrimination on the basis of ethnicity, if the discrimination is racial in character.

Section 1981 protects all private employees and all employees of state and local governments. It also protects independent contractors from discrimination by hiring firms and protects partners in a partnership from discrimination. It does not apply to federal employees, however.

No government agency enforces Section 1981 or takes complaints of violations of the law. Employees or applicants who believe their rights under Section 1981 have been violated may file a lawsuit in state or federal court.

7. Genetic Information Nondiscrimination Act.

The Genetic Information Nondiscrimination Act (GINA) can be found at 42 U.S.C. § 200 and following. This 2008 law prohibits employers from using an applicant's or employee's genetic information as the basis for employment decisions and requires employers to keep genetic information confidential.

GINA also prohibits employers from requiring or asking employees to provide genetic information. The law includes exceptions for information the employer learns inadvertently, information gathered pursuant to the certification requirements of the Family and Medical Leave Act, and information used for genetic monitoring, among other things. Even if one of these exceptions applies, however, the employer must keep the information confidential and may not use it when making employment decisions.

GINA applies to:

- private employers with at least 15 employees
- the federal government
- state governments
- private and public employment agencies
- labor organizations, and
- joint labor-management committees.

The EEOC enforces GINA. To find an EEOC office near you, and to find out more about GINA, visit the EEOC's website at www.eeoc.gov.

Colorado Anti-Discrimination Act

The state recently amended the Colorado Anti-Discrimination Act (CADA) by passing the Sexual Orientation Employment Discrimination Act (SOEDA). CADA now prohibits discrimination based on a person's sexual orientation, religion, disability, race, creed, color, sex, age, national origin or ancestry.

The statute makes it illegal for Colorado employers "to refuse to hire, to discharge, to promote or demote, to harass during the course of employment, or to discriminate in matters of compensation against" any member of the protected classes listed above.

CADA is Colorado's version of the federal Civil Rights Act, Age Discrimination in Employment Act and the ADA all rolled into one. But unlike the federal anti-discrimination laws, which cover only employers with 15 or more employees, Colorado's civil rights statute covers *all* employers regardless of size.

Ban on sexual-orientation bias

The SOEDA defines sexual orientation as "a person's orientation toward heterosexuality, homosexuality, bisexuality, or transgender status or an employer's perception thereof."

The law places new restrictions on employers. Under the SOEDA, employers:

- May not make pre-employment inquiries into an applicant's sexual preference.
- May not have separate lines of progression or seniority systems for employees of different sexual orientation.
- May not express a preference for a particular sexual orientation in job advertisements.
- Must allow each employee to dress according to the gender the employee identifies with, even if the employer has a gender-specific dress code.

Investigating complaints

Employees alleging discrimination under CADA may file complaints with the Colorado Civil Rights Division (CCRD), which will then attempt to mediate the dispute. If the parties choose not to participate or mediation is unsuccessful, the division will investigate the claim.

The CCRD will determine whether there's probable cause to believe a violation has occurred. If it finds no probable cause, the employee may appeal to the Colorado Civil Rights Commission.

If the CCRD does find probable cause, it will attempt to conciliate the dispute. If conciliation fails, the division's director will issue a dismissal notice along with a "right to sue" letter. The employee then has the option of suing in district court. In some cases, the Civil Rights Commission will order the case to go before an administrative law judge.

State law requires the CCRD to complete its investigation in 270 days. But anytime after 180 days, the employee may request a "right to sue" letter, which the division must provide.

Tip: Although legal representation isn't necessary during the investigation stage, it's advisable for employers to consult an attorney.

For further information on the civil rights statute, go to www.dora.state.co.us/civil-rights.